

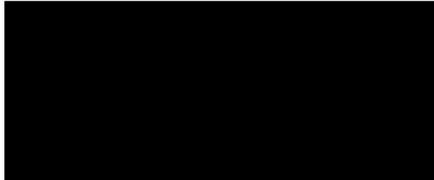
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

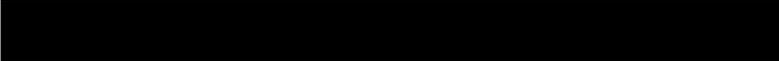
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DATE: Office: VERMONT SERVICE CENTER FILE: 

JAN 25 2012

RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

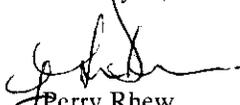


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director determined that the petitioner had not established she had been subjected to battery or extreme cruelty perpetrated by the United States citizen. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and a previously submitted affidavit.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated

against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Facts and Procedural History

The petitioner is a native and citizen of the Republic of Cape Verde. She entered the United States on February 23, 2002 as a nonimmigrant visitor with temporary authorization to remain in the United States until August 22, 2002. On June 9, 2007, she married G-C-,¹ the claimed abusive United States citizen. On November 18, 2007, G-C- filed a Form I-130, Petition for Alien Relative, on her behalf, which was denied on March 23, 2009. On April 21, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner claimed on the Form I-360 that she resided with G-C- from June 2007 until November 2009. On October 13, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by G-C-. Counsel for the petitioner timely submits a Form I-290B, a brief and the petitioner's previously submitted affidavit.

¹ Name withheld to protect the individual's identity.

Battery and/or Extreme Cruelty

In the petitioner's April 15, 2010 statement accompanying the Form I-360, the petitioner stated that during the first four months of her marriage the couple was extremely happy together. The petitioner declared that in November 2009, G-C- lost his job and did not tell her until she asked for money for the household bills. The petitioner indicated that G-C- took about \$1,000 from their joint bank account from December 2007 until February 2008 and after she realized what he had done she did not deposit any money into the account. The petitioner stated that after G-C- lost his job, he began to drink heavily and do drugs and he did not come home for days at a time. The petitioner declared that when he came home drunk and high he acted crazy and called her names and that they fought about money and his unwillingness to look for work. The petitioner indicated that after G-C- became unemployed, he became distant and angry, demanded money from her and treated her with extreme cruelty when he came home under the influence. The petitioner stated that she fell into a deep depression, felt isolated, and felt anxious. The petitioner declared that about three days before Thanksgiving in November 2009, G-C- disappeared and she later learned from one of his friends that he had been arrested for gun and drug possession and had been sentenced to 18 months in prison.

The initial record also included an April 15, 2010 affidavit signed by the petitioner's cousin who declared that he learned from the petitioner that the couple's conjugal life had been affected after G-C- started to use drugs and alcohol and it was even worse after G-C- was arrested and put in jail.

The petitioner also provided an April 13, 2010 psychological evaluation prepared by [REDACTED], based on a five and a half-hour interview with the petitioner. [REDACTED] provided an extensive recitation of the petitioner's family history, her medical history, education, and work history. [REDACTED] noted in particular that the petitioner suffered from an abusive situation with her first husband in Cape Verde. [REDACTED] indicated that the petitioner reported that when her first husband was drunk he would beat her and their kids, that he yelled a lot and insulted both the petitioner and their children, he cheated on her but was also jealous, and he forced her to have sex against her will. [REDACTED] observed that the petitioner suffered from symptoms of Major Depression during and after her first marriage. Regarding the petitioner's marriage to the claimed abusive United States citizen, the petitioner provided the same information as set out in her April 10, 2010 affidavit to [REDACTED]. In her report to [REDACTED] the petitioner noted that she felt scared when her husband came in looking crazy and she noted that he would sometimes bang on the door loudly with his fist and would grind his teeth when he was mad. The petitioner also reported to [REDACTED] that during the final two years of her marriage to G-C-, the couple continued to have a sexual relationship, but unlike her first husband, G-C- "never forced sex." The petitioner also told [REDACTED] that G-C- did not beat her up like her first husband and that he never broke things.

[REDACTED] found based on her interview with the petitioner that the actions of G-C- consisted of: name-calling, yelling and screaming; refusal to listen to the petitioner's concerns about his drug and alcohol abuse and not helping with the bills; pressuring her to give him money; not telling her that he had lost his job; cessation of support and care; withdrawing money from their joint

account without her knowledge; abuse of alcohol and drugs; and making her feel scared when he would come home looking crazy. [REDACTED] found that the petitioner had suffered economic and emotional abuse in the course of her marriage to G-C- and that as a result the petitioner began to suffer from an episode of Major Depression and from symptoms of acute anxiety during the course of her relationship with G-C-, as well as symptoms associated with Post-Traumatic Stress Disorder.

In response to the director's RFE, the petitioner provided a second personal statement dated December 20, 2010. In the second statement, the petitioner added that G-C-'s behavior also included controlling her and not letting her go out by herself and verbally attacking her when she wanted to run errands. The petitioner also adds two specific incidents: (1) on September 17, 2009 when she came home from work and made dinner, G-C- "threw the plate on the ground" and after that asked her to come to the bedroom to have sex and when she refused, he slapped her, cursed her, and "forced her to have sex with him;" and (2) on November 8, 2009 while she was making dinner, G-C- came home drunk and asked her to have sex and when she refused "grabbed [her] by the hair and then slapped [her] across the face" and called her a name and told her he did not want her anymore and left. The petitioner noted that she did not mention these past incidents because she did not want to relive them and it was hard for her to open up to anyone about it.

The petitioner also provided her son's December 20, 2010 affidavit in which he declared that he arrived in the United States in January of 2009 and in April 2009 noticed that G-C- drank heavily, criticized his mother's cooking and even threw a plate on the ground, and on September 17, 2009 his mother told him that G-C- had slapped her and on November 8, 2009 his mother told him that G-C- had slapped her.

Upon review of the record, the director noted the inconsistencies between the petitioner's first and second affidavits, noted that neither her cousin nor her son had witnessed the abuse but had relied on her reports, and observed that the petitioner's second affidavit directly contradicted information she had provided to [REDACTED]. The director called into question the petitioner's credibility and determined that the petitioner had not provided probative credible evidence that she had been subjected to battery or extreme cruelty perpetrated by G-C-.

On appeal, counsel for the petitioner asserts that the petitioner provided specific detail of specific instances of abuse and that it appeared that the director did not consider the petitioner's December 20, 2010 affidavit. Counsel contends that the petitioner was a victim of forced sex and that her husband did not allow her to leave the house by herself, which are instances of mental and physical abuse. Counsel avers that the director did not fully consider the psychological evaluation submitted. Counsel requests that the AAO approve the petition or remand the matter to the director for the submission of additional evidence and testimony.

Upon review of the record, the petitioner has not established that she was subjected to battery or extreme cruelty as defined in the statute and regulation. Counsel fails to address the inconsistent information provided by the petitioner in her two statements as well as her testimony in her December 20, 2010 affidavit that directly contradicts her report to [REDACTED]. Specifically, the

petitioner failed to discuss any instance of battery in her initial April 15, 2010 affidavit. Similarly, she failed to reference any form of battery in her statements to [REDACTED]. Rather, she specifically reported to [REDACTED] that G-C- was unlike her first husband as G-C- did not beat her, he did not throw things, and he did not force her to have sex. In the December 20, 2010 affidavit, the petitioner declared that G-C- threw a plate, slapped her, and forced her to have sex on September 17, 2009 and slapped her on November 8, 2009. The petitioner explains that she did not mention these two incidents to USCIS before because she did not want to relive it and it was hard to open up to anyone; however, she fails to explain why she did not mention these instances to [REDACTED] considering that she spoke freely of the abuse she suffered at the hands of her first husband to [REDACTED]. The petitioner affirmatively stated to [REDACTED] that during the final two years of her marriage to G-C-, she and G-C- continued to have a sexual relationship, but unlike her first husband, G-C- “never forced sex” and that G-C- did not beat her up like her first husband and that he never broke things. The petitioner’s claim in her second affidavit that G-C- slapped her and forced her to have sex is not credible in light of her testimony to [REDACTED]. Similarly, the petitioner’s son’s declaration that his mother told him G-C- slapped her is not probative as it is based on the petitioner’s inconsistent and contradictory testimony. The petitioner has not established that she was subjected to battery perpetrated by G-C-.

Neither has the petitioner established that she was subjected to extreme cruelty as that term is defined in the statute and regulation. The petitioner initially described the difficulties she faced when G-C- lost his job and began to drink heavily and use drugs. Although the petitioner notes that the couple fought about G-C-’s unwillingness to find work, their lack of money, and his abuse of alcohol and drugs, the petitioner did not describe specific behavior that constitutes extreme cruelty under the statute and regulation. Although G-C- called the petitioner names and “acted crazy” when he was under the influence of alcohol and drugs, the petitioner did not offer probative testimony establishing that G-C-’s actions were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor did the petitioner’s testimony establish that G-C-’s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, “[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness.” See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). Similarly, the petitioner’s cousin’s affidavit submitted on her behalf does not include probative testimony of specific instances of G-C-’s behavior that he observed that constitute extreme cruelty under the statute and regulation.

[REDACTED] noted G-C-’s various generalized behaviors but does not provide specific examples of G-C-’s actions. Upon review of the psychological evaluation, [REDACTED] does not provide substantive, probative evidence demonstrating that G-C-’s actual behavior included threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence and thus that its actions were a form of extreme cruelty under the statute and regulation.

Upon review of the petitioner's second affidavit, dated December 20, 2010, the petitioner added that G-C- isolated her and did not let her go out by herself and verbally attacked her when she wanted to run errands. The petitioner, however, does not provide specific examples of this behavior and does not explain the circumstances and interactions leading to the alleged actions by G-C-. There is insufficient information provided to ascertain the validity of the petitioner's claim in this regard. As with the unexplained inconsistent and contradictory statements appearing in the petitioner's second affidavit relating to being slapped and forced into sexual intimacy, the petitioner's claims of being controlled and isolated is not probative and does not assist in establishing that she was subjected to behavior that constitutes extreme cruelty under the statute and regulation. The petitioner fails to provide specific testimony of the verbal or emotional abuse allegedly suffered and she does not describe specific instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by G-C-.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.